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EXAMINER

TORRES, ALICIA M

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/772,122
Filing Date: February 04, 2004
Appellant(s): MAJKRZAK, DAVID S.

Peter J. Ims
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 30 July 2008 appealing from the Office action mailed 9 January 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

Poget, FR 2595190 A1, 11 September 1987

Isbell, US 4,380,889, 26 April 1983

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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

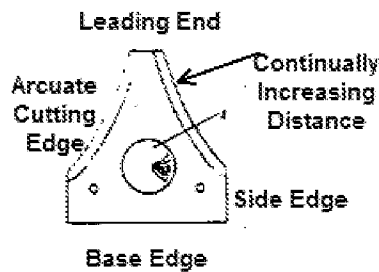
The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 requires that each cutting line be concave with respect to a straight line between the first and second ends of the respective cutting line being about 14% of the length of the straight line. However, this structural limitation, specifically this ratio of 14%, was not included in the original set of claims, instead it was added in the amendment filed 6 February 2006. Additionally, the ratio was not included in the originally filed Specification and was instead added in the amendment of 6 February 2006. Therefore, the ratio constitutes New Matter. As to the drawings, the examiner refers the applicant to case law *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). Specifically, the case concluded that it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue. In this instant case, the applicant was silent on the issue of dimensions of the drawings and therefore any arguments based on measurement of the drawing features are of little value. See MPEP 2125 Drawings as Prior Art, Proportions of Features in a Drawing are not Evidence of Actual Proportions When Drawings are not to Scale.

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Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Poget FR 2595190 A1 in view of Isbell 4,380,889.

Poget discloses a knife section comprising:

- A flat top and bottom surface
- A base edge
- A leading end opposite the base edge
- A left side including
 - An edge extending from the base edge to about one half of a distance between the base edge and leading end
 - An arcuate left cutting edge extending between the left side edge and the leading end
- A right side including
 - An edge extending from the base edge to about one half of a distance between the base edge and leading end
 - An arcuate right cutting edge extending between the left side edge and the leading end
- Wherein a distance between the left cutting edge and the right cutting edge continually increases from the leading end to the left and right side edges
- Wherein the arcuate cutting edges define portions of a substantially elliptical cutting edge when a left side edge of one knife section is positioned substantially adjacent to a right side edge of another knife section.



However, Poget fails to disclose serrated cutting edges.

Isbell discloses a similar knife section wherein the cutter blades are sharp and serrated to produce a highly effective scissors or shearing action (see column 1, lines 54-56).

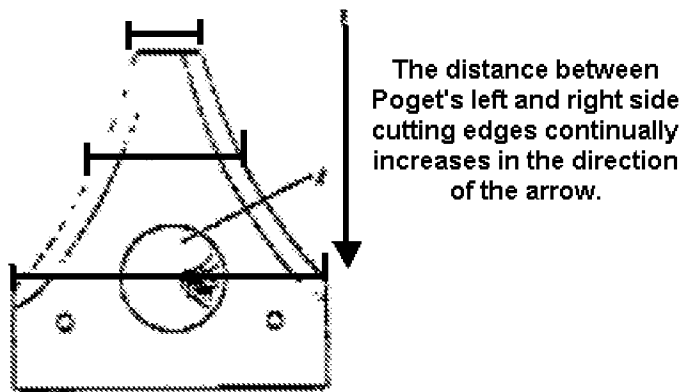
It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the serrations as taught by Isbell on the knife sections of Poget in order to produce an efficient scissor action.

(10) Response to Argument

The appellant first argues that the combination of Poget and Isbell fails to suggest increasing the arc of the cutting edge to make the cutting edge substantially elliptical and instead discloses a substantially V-shaped cutting edge. Second, the appellant argues that the 35 USC 112, first paragraph rejection against claims 1, 2, 4 and 5 as containing New Matter is in error.

In response to the appellant's first argument that Poget and Isbell fail to disclose a substantially elliptical cutting edge, independent claim 16 requires that a distance between the left cutting edge and the right cutting edge continually increases from the leading end to the left and right side edges. As seen in Poget's figure below, the distance between the left and right cutting edges continually increases. There is no point at which the distance between the left and right side cutting edges decreases or remains the same.

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Since Poget's cutting edge reads on the limitation of claim 16, and in view of the similarities in the shape of the cutting edges shown in the appellant's Exhibits A and B, it is unclear to the examiner the difference between Poget's substantially V-shaped cutting edge and the substantially elliptical cutting edge of the invention. Specifically, there is no novelty seen either by the examiner or pointed out by the appellant, nor is it clear that the invention would solve any stated problem or serve any purpose that the sickle of Poget and Isbell could not.

In response to the appellant's second argument that the 35 USC 112, first paragraph rejection is in error, the examiner stands by the Federal Circuit Decision in 2000 which made clear that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue. In this case, the original disclosure did not state that the drawings were to scale. Additionally, there was no discussion about the ratio of "about 14%" in the original disclosure. While it is true that an applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, diagrams, etc., the appellant needed the extra step of declaring the drawings "to scale" in order to rely on such a limitation as the ratio of about 14%.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Alicia M Torres/

Conferees:

Thomas Will /tbw/

Darnell Jayne /dj/

